

REMARKS

Entry of the foregoing and reconsideration of the application identified in caption, as amended, and in light of the remarks which follow, are respectfully requested.

Applicants respectfully submit that it was improper for the Patent Office to make the July 27, 2010 Official Action a final rejection. Accordingly, Applicants respectfully request that the finality of such Official Action be withdrawn.

The Final Official Action sets forth new grounds of rejection based on U.S. Patent No. 4,212,965 (*Campbell*). At page 8 of the Final Official Action, the Examiner alleged that "Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action." **However, the only claim amendment that was made in the Amendment filed on May 3, 2010, was the addition of new dependent claim 29. The Examiner's new grounds of rejection relying on *Campbell*, were not necessitated by the addition of dependent claim 29.**

Rather, the Examiner cited *Campbell* for allegedly teaching "a polyamide, therefore thermoplastic, that is an impact modifier, for the purpose of obtaining films having impact resistance", and for allegedly showing that "It therefore would have been obvious...to provide for the polyamide of Campbell in Mugge et al to provide impact resistance as taught by Campbell." Official Action at page 3. Quite clearly, Applicant's claim amendment on May 3, 2010, did not necessitate the Examiner's new grounds of rejection, i.e., the new rejections citing *Campbell*.

M.P.E.P. §706.07(a) provides that a second or any subsequent action on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during

the period set forth in 37 C.F.R. §1.97(c), e.g., before a final Official Action is issued. In the present case, the Examiner introduced new grounds of rejection in the July 27, 2010 Office Action that were neither (1) necessitated by any claim amendments presented by Applicants, nor (2) based on any information presented in an Information Disclosure Statement. *Campbell* was first cited in the Examiner's Notice of References Cited (form PTO-892) issued in the Final Official Action.

Therefore, Applicants respectfully submit that the finality of the July 27, 2010 Office Action was improper. Furthermore, by introducing new grounds of rejection in the July 27, 2010 Office Action that were not necessitated by claim amendments or information presented in an Information Disclosure Statement, the finality of the July 27, 2010 Office Action does not provide Applicants an adequate opportunity to respond to the new grounds of rejection. Accordingly, withdrawal of the finality of the rejection is in order, and such action is respectfully requested.

By the above amendments, claim 29 has been canceled without prejudice or disclaimer, and the subject matter of such claim has been incorporated into claim 1. Claims 5-9, 19 and 21-25 have been canceled without prejudice or disclaimer. Entry of the foregoing amendments is proper at least because the finality of the rejection indicated in the Official Action is improper for the reasons discussed above.

In the Official Action, claims 1-3, 5-11, 19, 21-25 and 27-29 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,425,817 (*Mugge et al*) in view of U.S. Patent No. 5,039,786 (*Pipper et al*) and U.S. Patent No. 4,212,965 (*Campbell*). Claims 12 and 14-18 stand rejected under 35 U.S.C. §103(a) as being obvious over *Mugge et al* in view of *Pipper et al* and *Campbell*, and further in view of European Patent Document No. 0 646 627 (*Princiotta et al*). Claim 13 stands rejected under 35 U.S.C. §103(a) as being obvious over *Mugge et al* in view

of *Pipper et al* and *Campbell*, and further in view of U.S. Patent No. 5,357,030 (*VanBuskirk et al*). Claim 26 stands rejected under 35 U.S.C. §103(a) as being obvious over *Mugge et al* in view of *Pipper et al* and *Campbell*, and further in view of U.S. Patent No. 4,881,576 (*Kitami et al*). Withdrawal of these rejections is respectfully requested for at least the following reasons.

Claim 1 now recites that at least one internal layer is in direct contact with the external layer. *Mugge et al* fails to disclose or suggest such claimed subject matter. In this regard, the Patent Office has alleged that the inner and outer layers disclosed by *Mugge et al* correspond to the claimed internal and external layers, respectively. See Official Action at page 2. However, *Mugge et al* teaches the use of an intermediate layer comprising a linear, crystalline polyester-based molding composition interposed between and bonding together the inner and outer layers. See abstract and col. 1, lines 56-59. It would not have been obvious to the ordinarily skilled artisan to modify *Mugge et al* by removing such intermediate layer from the pipe, in view of the fact that *Mugge et al* teaches the criticality of such layer in bonding together the inner and outer layers of the pipe.

The secondary applied documents fail to cure the above-described deficiencies of *Mugge et al*. In this regard, the Patent Office has relied on *Pipper et al* for disclosing a copolymer of caprolactam and a mixture of hexamethylene diamine with a diacid having 12 carbons at a particular ratio. See Official Action at page 3. *Campbell* has been relied on for its teachings concerning an impact modifier. See Official Action at page 3. *Princiotta et al* has been relied on for disclosing the use of an acid-modified ultra low density polyethylene having specific characteristics. Official Action at page 5. *VanBuskirk et al* has been relied on for disclosing the addition of a chain extender to polyamide 6. Official Action at page 6.

Kitami et al has been relied on for disclosing a gasoline hose having specific characteristics. Official Action at page 7. Even if the above secondary applied documents would have combined with *Mugge et al* in the manner suggested by the Patent Office, the resulting combination nevertheless fails to disclose or suggest that at least one internal layer is in direct contact with the external layer, as recited in claim 1.

For at least the above reasons, it is apparent that the claims are non-obvious over the applied art. Accordingly, withdrawal of the §103(a) rejections is respectfully requested.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: November 15, 2010

By:



Roger H. Lee

Registration No. 46317

Customer No. 21839
703 836 6620